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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
09/761,981	01/17/2001	David K. Swanson	15916-282	5761	
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Attn: Craig A. Slavin, Esq.			EXAMINER		
Henricks, Slavin & Holmes LLP Suite 200		VRETTAKOS, PETER J			
840 Apollo Stre El Segundo, CA			ART UNIT PAPER NUMBER		
Li Sugarido, Or	. , , , , ,		3739		
			DATE MAH ED. 00/02/0000	DATE MAIL ED. 00/02/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Applicantles Application No. Applicantles Applicantles Application No. Applicantles Application No. Applicantles Application No. Appl				AT
## Examiner Art Unit \$739 - The MAILING DATE of this communication app ars on the cover sheet with the correspondenc address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Examinors of time may be available under the provisions of 3° CFR 1.35(a). In no event, however, may a teply be timely filed - If the period for reply is specified above, the maximum shallong principle with the batholory minimum of thing (20) days will be cornidered timely. - If the period for reply is specified above, the maximum shallong principle will be considered timely. - If the period for reply is specified above, the maximum shallong principle will be communication. - If the period for reply is specified above, the maximum shallong principle will be communication. - If the period carries will be official be the three mailing date of this communication, even if timely filed, may reduce a may reduce a may reduce a may be a state that adjustment. Sea 3° CFR 1.70(b). **Status** 1		Application No.	Applicant(s)	
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the proteitions of 37 CFR 1.36(s). In no event, however, may a reply be timely filled - Extensions of time may be available under the proteitions of 37 CFR 1.36(s). In no event, however, may a reply be timely filled - Extensions of time may be available under the proteitions of 37 CFR 1.36(s). In no event, however, may a reply be timely filled - Extensions of time may be available under the proteitions of 37 CFR 1.36(s). In no event, however, may a reply be timely filled - If NO period for reply as pecified above, the maximum statistions premised will apply and will expire SIX (5) MON THS from the mailing date of time communication. - Any reply received by the Official with that there no months differ the mailing date of this communication, even if timely filled, may reduce any accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Status 1) Responsive to communication(s) filled on 17 January 2001 - Za) This action is FINAL. - 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-9 is/are pending in the application. 4) Claim(s) 1-9 is/are allowed. 6) Claim(s) 1-9 is/are allowed. 6) Claim(s) 1-9 is/are allowed. 6) Claim(s) 1-9 is/are allowed. 7) Claim(s) 1-9 is/are allowed. 8) Claim(s) 1-9 is/are allowed. 8) Claim(s) 1-9 is/are allowed. 10) The drawing(s) filled on 17 January 2001 is/are: all accepted or bl⊠ objected to by the Examiner. 10) The drawing(s) filled on 17 January 2001 is/are: all accepted or bl⊠ objected to by the Examiner. 10) The drawing(s) filed on 17 January 2001 is/are: all accepted or bl⊠ objected to by the Examiner. 11) The proposed drawings are required in reply to this Office				
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DETAILED ACTION

The applicant is requested to disclose cases with similar claimed subject matter to that found in the instant application.

Election/Restrictions

Claims 10-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 15.

Drawings

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The language, "relatively short shaft" is indefinite.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by LaFontaine et al. ('872).

Concerning independent claim 1 and dependent claim 4, LaFontaine et al. (LaFontaine) discloses a surgical probe (see figures 4 and 5) comprising a shaft (14), a plurality of electrodes (38,89), and a tissue cooling apparatus (78) including an outer member (82), a continuous fluid transmission space (illustrated by arrows, 114), an inlet (26), and an outlet (96).

Concerning claim 2, LaFontaine discloses a relatively short shaft (14).

Concerning claim 3, LaFontaine discloses a portion (36) of the shaft that is malleable / pliable. Note column 7 lines 41-47.

Concerning claims 5 and 6, the tissue cooling apparatus (78) comprises a microporous structure (80), Surlyn or Latex as disclosed in column 14 lines 61-63.

Concerning claims 7 and 8, the fluid transmission space defines a substantially constant cross-sectional area between the inlet and the outlet as strongly deduced from figure 5. In other words, all along the shaft (excluding the distal tip (82)) the cross sectional of the fluid transmission space is constant. Moreover, as the fluid transmission

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space in figure 5 along the shaft envelops the wire lumen (30), it is inherent that the space's cross-sectional area is annularly shaped.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over La Fontaine et al. ('267) in view of Panescu et al. ('267).

LaFontaine, which has been described above, neglects to disclose a fluid supply line supported on the exterior of the shaft.

Panescu et al. discloses a surgical probe similar to LaFontaine comprising a malleable shaft (22, fig.2a), an electrode (16), a tissue cooling apparatus (60, fig.3a), and fluid supply line (64) supported on the exterior of the shaft. Further, for future reference note that Panescu et al. discloses an outlet lumen (76) in figure 6.

Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify LaFontaine in view of Panescu by including an external fluid supply line in order to cool the periphery of the electrode as disclosed in Panescu column 6 lines 42-44.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Swanson (US 2002/0128640).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 is provisionally rejected under the judicially created doctrine of double patenting over claim 20 of copending Application No. 09/652,099. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: both claims include a shaft, energy transmission devices, and tissue cooling apparatuses with inlets and outlets.

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Furthermore, there is no apparent reason why applicant would be prevented from

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presenting claims corresponding to those of the instant application in the other

copending application. See In re Schneller, 397 F.2d 350, 158 USPQ 210 (CCPA

1968). See also MPEP § 804.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Peter J Vrettakos whose telephone number is 703 605

0215. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Linda C Dvorak can be reached on 703 308 0994. The fax phone numbers

for the organization where this application or proceeding is assigned are 703 746 7013

for regular communications and 703 746 7013 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is 703 308

0858.

Pete Vrettakos September 17, 2002

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